

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS E. MERTZ, Plaintiff	:	CIVIL ACTION - LAW
v.	:	
	:	<u>JURY TRIAL DEMANDED</u>
DONZI MARINE, INC. and AMERICAN MARINE HOLDINGS, INC., in its own right and d/b/a DONZI MARINE, Defendants and Third-Party Plaintiffs	:	
v.	:	THE HONORABLE MAURICE B. COHILL, JR.
	:	
THE BOAT STORE Third-Party Defendant	:	NO.: 1:04-cv-0055

**MOTION FOR RECONSIDERATION IN RELATION TO
THIS COURT'S ORDER OF MAY 14, 2007 DENYING WITHOUT
PREJUDICE THE MOTION TO AMEND THE THIRD-PARTY COMPLAINT OF
DEFENDANTS AND THIRD-PARTY PLAINTIFFS, DONZI MARINE, INC.
AND AMERICAN MARINE HOLDINGS, INC., PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 15(a) AND (c)**

Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc. (hereinafter collectively "Donzi Marine"), through its attorneys, Sweeney & Sheehan, P.C., hereby submit a Motion for Reconsideration of this Court's Order dated May 14, 2007 denying without prejudice Donzi Marine's Motion to Amend the Third-Party Complaint pursuant to Federal Rule of Civil Procedure 15(a) and (c), and aver as follows:

1. Donzi Marine filed a Motion to Amend the Third-Party Complaint pursuant to Federal Rule of Civil Procedure 15(a) and (c) and requested that this Court change the name of the party against whom their third-party claims are asserted from "The Boat Store" to "Szczeny Enterprises, Inc. d/b/a The Boat Store."
2. Donzi Marine further requested that this name change relate back to the filing

date of the original Third-Party Complaint based upon its compliance with Federal Rule of Civil Procedure 15(c)(2) and (3), or in the alternative, that the Court toll the applicable limitations period and allow an amendment of the pleadings to correctly name "Szczesny Enterprises, Inc. d/b/a The Boat Store" based upon the principles of equity.

3. By Order dated April 12, 2007, Third-Party Defendant, The Boat Store, was ordered to file a response to said motion no later than April 26, 2007.

4. The Boat Store never filed a response to said motion.

5. On or about May 14, 2007, this Honorable Court entered a Memorandum Order denying without prejudice the Motion to Amend the Third-Party Complaint to change the name of the Third-Party Defendant from The Boat Store to Szczesny Enterprises, Inc. d/b/a The Boat Store. (See the Memorandum Order dated May 14, 2007 which is attached hereto as Exhibit "A")

6. In its Memorandum Order, the Court granted leave for Donzi Marine to provide more definitive evidence that Szczesny Enterprises, Inc. is doing business as The Boat Store. (See Exhibit "A," pg. 2).

7. In support of its Motion for Reconsideration, Donzi Marine has further evidence that Szczesny Enterprises, Inc. was doing business as The Boat Store.

8. Gregory Szczesny, the founder of The Boat Store, filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court of the Western District of Pennsylvania. (See cover pages of Chapter 7 Voluntary Petition which is attached hereto as Exhibit "B").

9. In Mr. Szczesny's bankruptcy filings he identifies in Schedule A, Real Property, that both he and his wife own a commercial premises at 10170 West Main Street, North East, Pennsylvania pursuant to the deed recorded in Erie County at R.B. 690 at pg. 1750. (See

Schedule A of bankruptcy filing which is attached hereto as Exhibit "C").

10. In Mr. Szczesny's deposition testimony, he also identifies that The Boat Store was initially located at 10190 West Main Road, North East, Pennsylvania, but then moved to 10170 West Main Road, North East, Pennsylvania in the year 2000. (See deposition testimony of Gregroy Szczesny, pgs. 6-7 which is attached hereto as Exhibit "D").

11. As of February 2, 2005, Mr. Szczesny testified that The Boat Store was still doing business at 10170 West Main Road in North East, Pennsylvania. (See Exhibit "D," pg. 7).

12. Pursuant to Schedule B of the bankruptcy filings wherein Mr. Szczesny identifies Szczesny Enterprises, Inc. d/b/a The Boat Store as an incorporated business in which he has an interest. (See Schedule B of bankruptcy filing which is attached hereto as Exhibit "E").

13. An inventory list attached to Schedule B of the bankruptcy filing identifies Szczesny Enterprises, Inc. d/b/a The Boat Store's list of inventory which includes four boats that have a retail value of \$15,000, a one boat triaxle valued at \$3,000, miscellaneous parts and accessories valued at \$6,000, and an office trailer valued at \$6,000 retail. Mr. Szczesny identifies that all boats and other items on the list of inventory are owned by the corporate entity. (See list of inventory which is attached hereto as Exhibit "F").

14. Finally, Mr. Szczesny lists in his bankruptcy filings that Szczesny Enterprises, Inc. does business as The Boat Store at 10170 West Main Road, North East, Pennsylvania 16428. In addition, Mr. Szczesny indicates in ¶ 18 of the bankruptcy filing that Szczesny Enterprises, Inc. d/b/a The Boat Store's nature of business is boat sales and service. (See Exhibit "G," ¶ 18 of the bankruptcy filing).

15. Mr. Szczesny as founder and interest holder of Szczesny Enerprises, Inc. d/b/a The Boat Store has repeatedly identified in the bankruptcy filings that Szczesny Enterprises, Inc. does business as The Boat Store and continues to have inventory at the identified 10170 West Main Road address.

16. Based upon the deposition testimony of Gregory Szczesny and his bankruptcy filings, it is clear that Szczesny Enterprises, Inc. does business as the Boat Store at 10170 West Main Road, North East, Pennsylvania 16428.

WHEREFORE, the Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc., respectfully request that this Honorable Court enter an Order granting its Motion for Reconsideration and amend the Third-Party Complaint to change the name of the Third-Party Defendant from The Boat Store to Szczesny Enterprises, Inc., d/b/a The Boat Store.

Respectfully submitted,

SWEENEY & SHEEHAN

BY: 

Robyn F. McGrath, Esquire
Identification No.: 55892

Attorney for Defendants and
Third-Party Plaintiffs,
Donzi Marine, Inc. and American
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Date: June 14, 2007